

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 43106
Issued to: Michael W. Belton

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD
2278

Michael W. Belton

This appeal has been taken in accordance with Title 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 16 November 1981, an Administrative Law Judge of the United States Coast Guard at Norfolk, Virginia, suspended Appellant's license for two months plus six months on eight months' probation upon finding him guilty of negligence. The specification found proved alleges that while serving as operator on board United States M/V CROCHET No. 2 under authority of the license above captioned, on or about 7 June 1981, Appellant negligently navigated said vessel causing a barge the vessel was towing to allide with the grounded S/V TALOFA LEE, damaging the pleasure craft.

A hearing was held at Norfolk, Virginia, on 15 October 1981 and continued on 19 October 1981.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence the testimony of four witnesses and four exhibits.

In defense Appellant offered in evidence the testimony of two witnesses and one exhibit.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and one specification had been proved. He then served a written order on Appellant suspending all documents issued to Appellant for a period of two months plus six months on eight months' probation.

The Order was served on 19 October 1981 and the entire decision was served on 18 November 1981. Appeal was timely filed on 21 October 1981 and perfected on 7 December 1981.

FINDINGS OF FACT

On 7 June 1981, Appellant was serving as Operator on board the

United States M/V CROCHET No. 2 and acting under authority of his license while the vessel was underway from Carolina Beach Inlet, North Carolina, bound for Norfolk, Virginia, in the Atlantic Intracoastal Waterway.

At all pertinent times on 7 June 1981 the CROCHET No. 2 was pulling an approximately 700-foot tow consisting of four barges and various lengths of pipe supported by pontoons. From the towboat, in order, were fuel barge No. 11, 70 feet in length, derrick barge No. 3, 50 feet in length, three rows of pipe supported by a series of pontoons arranged three abreast with a small barge on the port side supporting lengths of pipe running to a 24-foot anchor barge.

Three tender or pusher boats were assigned to the tow when it was made up at Carolina Beach Inlet. Their function was to control the movement of the after portion of the tow. One was not in operative condition and at all pertinent times it was tied up to another flotilla for repairs.

Neither of the two operating pusher boats had any radio communication with CROCHET No. 2.

CROCHET No. 2 and its tow were accompanied by a smaller flotilla located approximately one-half mile ahead. That tow consisted of the dredge TALCOTT, a barge, and a tug.

Upon departure from Carolina Beach Inlet at noon on 7 June 1981, Captain William Clyde Spencer was operator of the CROCHET No. 2. He remained at the conn between 1200 and 1400. At 1400 Michael W. Belton, mate aboard the CROCHET No. 2, took the conn and occupied that position at all pertinent times and specifically at 1530 when the incident giving rise to this proceeding occurred.

The CROCHET No. 2, with its tow, proceeded northbound along the Intracoastal Waterway at approximately three knots. At 1520 it was located in Myrtle Grove Sound between buoys No. 148 and 149 in the state of North Carolina.

The S/V TALOFA LEE, under power, sails furled, was heading southbound at about 4 knots in the Intracoastal Waterway bound for the Caribbean. Two crew members were aboard the sloop.

Between buoys No. 148 and 149 the Atlantic Intracoastal Waterway is approximately 120 feet wide and, in the middle of the channel, 12 feet deep.

The crew members aboard TALOFA LEE observed CROCHET No. 2 as it approached in the opposite direction off the port bow and read its name. The tug and sloop passed port to port and, as TALOFA LEE

proceeded, the crew observed that the after portion of the tow was gradually swinging to port and encroaching on their side of the channel. The sloop made a series of gradual maneuvers to starboard in an effort to avoid a collision with the flotilla.

As the flotilla was approximately two-thirds past, TALOFA LEE grounded on its side of the channel. At that point the crew attempted to free the vessel but it was hard aground. Two minutes elapsed between that time and the collision.

At approximately 1530 the bow of the anchor barge struck TALOFA LEE heeling it over to a severe angle and pushing it approximately 50 to 60 feet outside the channel. The said boat ultimately disengaged from the barge and the barge continued ahead with the tow.

A short time before TALOFA LEE and CROCHET No. 2 passed abeam of each other one of the pusher boats departed CROCHET No. 2's tow and went ahead to the other Norfolk Dredging Company flotilla which included the dredge TALCOTT. Shortly thereafter, and as TALOFA LEE was approaching CROCHET No. 2, the remaining pusher boat which had been stationed on the port side of the tow left its position and proceeded toward TALCOTT.

Appellant was unaware that the remaining pusher boat had left its position on the tow until he observed it abeam to port. He tried with hand signals to get its attention, but apparently failed. After it passed he called on the radio to a crew member on TALCOTT to have another boat assigned to his tow. No radio contact was made with TALOFA LEE by Appellant nor did he initiate any whistle signals to that craft or to the last departing pusher boat. Appellant was unaware of the collision until called to his attention by another vessel.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that the ALJ erred (1) in treating this as a case of allision raising a presumption of negligence on the part of the respondent; (2) in finding the respondent guilty of the charge of negligent navigation of CROCHET No. 2; and (3) in finding negligent navigation on the basis of specific acts or omissions which were not alleged in the specifications and which did not constitute a part of the government's case in chief.

OPINION

I

Appellant argues that the Administrative Law Judge erred in treating this as a case of allision. An allision is a type of collision, one in which a moving vessel collides with a stationary object. Appellant does not argue that a collision did not occur, nor does he dispute the fact that TALOFA LEE was grounded at the time of the collision. His argument is that because TALOFA LEE had grounded just a few minutes before the collision but after CROCHET No. 2 had passed it, TALOFA LEE was not a stationary object for the purpose of the rules relating to allision. Appellant's chief concern is that an allision raises a rebuttable presumption of negligence on the part of the one in control of the moving vessel. He contends that the application of this presumption was improper and worked an injustice upon him. I agree.

The reason for this presumption of negligence is that an operator, or one in charge of a moving vessel, knows or should know the presence of fixed objects which present dangers of collision in the waters in which the vessel is operating. It is unlikely that Appellant could have known that TALOFA LEE would ground, or even when she did, given that the grounding took place after CROCHET No. 2 had passed it. While this collision may technically be called an allision, it is certainly not the kind of allision which gives rise to the presumption of negligence.

While there may have been evidence in the record introduced by the Coast Guard from which the Administrative Law Judge could have concluded that Appellant negligently navigated his vessel, it is clear that the Administrative Law Judge did not weigh this evidence without benefit of the presumption against that submitted by Appellant. The specification found proved alleged that Appellant "negligently fail[ed] to navigate said vessel in such a manner as to preclude the barge said vessel was towing...from alliding with the grounded S/V TALOFA LEE..." (emphasis added). The Administrative Law Judge concluded that the evidence submitted by Appellant to rebut the presumption which arises when an allision occurs was insufficient to overcome the presumption's impact. Order and Decision, at 17. I do not find that an allision occurred, or if it did, it was not such as to give rise to a presumption of negligence on the part of the moving vessel. Therefore the theory on which the case was tried missed the mark.

CONCLUSION

For the foregoing reasons I find the decision unsupported and cannot affirm the order.

ORDER

The order of the Administrative Law Judge dated at Norfolk,

Virginia, on 16 November 1981, is VACATED and the charge is DISMISSED.

B. L. Stabile
Vice Admiral, U.S. Coast Guard
Vice Commandant

Signed at Washington, D.C. this 14th day of July 1982.